

TRANSCRIPT

The second act: Marketplace Fairness in 2015

Podcast interview with Betsy Laird, Senior Staff Vice President, Global Public Policy of the [International Council of Shopping Centers](#), and Leigh Minnier, member of the Kimco Realty blogging team

Leigh: Hello everyone. My name is Leigh Minnier and I'm a member of Kimco Realty's blogging team. Today we're here with Betsy Laird, Senior Vice President, Office of Global Public Policy at the International Council of Shopping Centers, otherwise known as ICSC. Today we've invited Betsy for discussion on the latest developments around the Marketplace Fairness Act of 2015 and how it will help level the playing field between brick and mortar retail stores and ecommerce. For those unfamiliar with the Act, the Marketplace Fairness Act grants states the authority to compel online and catalog retailers to collect sales tax at the time of the transaction, no matter where they're located, exactly like local retailers are already required to do. Welcome to the show, Betsy.

Betsy: Thank you.

Leigh: I know many of our listeners are familiar with the International Council of Shopping Centers, but for those that aren't, could you explain briefly what the ICSC does and what your role is as the Senior Staff Vice President of Global Public Policy?

Betsy: I'd be happy to. As you know, ICSC is a global regional real estate trade association. It has about 70,000 members around the world, all who are involved in the shopping center industry in some way, shape, or form. They may be owner-developers, like Kimco, or retailers, brokers, lenders, architects, academics, public sector officials, students, or so on. As you can imagine, most of our membership is located in North America. The group was formed in the late 1950s, primarily for deal making purposes, to provide opportunities for owner developers to meet with retailers who may become tenants down the road.

While the headquarters is in New York City, the Washington office was created in the aftermath of the 1980s Tax Act, which was a piece of legislation that proved very detrimental to our industry. The membership vowed not to be caught off guard again; they saw the necessity of creating an advocacy program, and that led to the opening of the Washington office.

Personally, I joined ICSC in late 2003. Our office primarily lobbies Congress and the Administration near Washington, but we are also active at the state level with state legislatures around the country. We also have a presence in Brussels, to represent our European members before the European.

Leigh: Can you tell us a little bit about the ICSC's involvement and advocacy around efairness and give listeners a quick recap of the current sales tax system, as it relates to retailers?

Betsy: I'd be happy to do that. Efairness is an issue that ICSC has been involved in for nearly 20 years. ICSC and the other stakeholders are basically lobbying Congress to close a current loophole that exists in our sales tax collection system. The issue began back in the early '90s over concerns people had with catalog sales. It was long before the birth of the web, much less before ecommerce. In those early years, most of the action was at the state level. While federal legislation was introduced from time to time, in the early 2000s, it failed to gain any traction. All of this changed in 2011 in large part to Kimco's CEO David Henry becoming ICSC's chairman. During his reign, and with the full support of the board, ICSC devoted considerable financial resources to developing and implementing a comprehensive public affairs campaign, aimed at educating Congress and the public on the need for efairness.

So, I think you mentioned a brief definition of what efairness is all about. But essentially, 45 states have sales and use tax laws on their books, yet a pre-internet Supreme Court Case from 1992, called Quill vs. North Dakota, created a rule whereby states could not compel out of state sellers to collect sales taxes because the burden would be a violation of interstate commerce. The ruling defined nexus as a physical presence, and it did not fathom at the time, an electronic universe where people could shop from their phone, or their tablet or the computer, from anyone who's selling on the web. So here we are 23 years later: many online-only retailers are not collecting the sales tax on a purchase despite the fact that the tax is still due. Brick and mortar retailers, as you mentioned, are required by law to collect the tax on behalf the state, putting them at a significant competitive disadvantage to their online counterparts. So as it is currently, the burden to report the sales & use taxes falls to the consumer, and it's no surprise that the compliance rate in the U.S. for reporting is less than one percent because consumers either don't know that the tax is owed, or they believe that sales tax was charged and remitted when the purchase was made. ICSC and other supporters are seeking a federal solution so that states essentially have the ability to enforce their own laws that compel the out-of-state, online-only e-tailers with charging and remitting the sales tax that's due on a sale. The reason the Congress has to get involved is because it's a matter of interstate commerce.

Leigh: The Marketplace Fairness Act of 2015 was introduced in the Senate in March, and the ICSC has said it tracks closely with legislation that the Senate passed by an overwhelming bipartisan majority in 2013. At a high level, what does the legislation for the Marketplace Fairness Act of 2015 entail, and what has taken place or been updated since the original bill was introduced?

Betsy: Well, the new number of the bill in the Senate is S698 and it does track what was previously passed in the Senate in 2013. As I mentioned, the legislation gives states the ability to compel out-of-state, online-only retailers to correct and properly remit the sales tax owed to the state where the customer is the destination range, if you will.

There are 24 states that belong to something called the Streamline Sales & Use Tax Agreement. Those states have already simplified their sales tax system and in many cases, retailers have been collecting and remitting on a voluntary basis for some time. For the other 21 states that are not part of the agreement, they can comply with the Marketplace Fairness Act by making tax simplifications that are outlined in the bill, and after a short waiting period, all of those 45 states can then begin to enforce the collection and remittance.

So, this takes the burden off the consumer, the customer. It ends the competitive price advantage that online-only retailers enjoy, and it helps towns and states by adding a much-needed revenue stream. I should also add, the Bill does have an exemption for small businesses – those who are generating less than a million dollars in online-only sales.

Leigh: In a recent press announcement, ICSC said that the Marketplace Fairness Act will help ensure that the market determines winners and losers. What does this legislation change for brick-and-mortar retailers, and can you just expand a bit on that statement?

Betsy: If the Marketplace Fairness Act is enacted it's going to end the government sanctioned subsidy for online-only retailers. So if you eliminate the loophole that gives these e-tailers a "pass" on charging and remitting the sales tax, you put all retailers on level ground. Instead they're going to have to compete on price or quality or service, etc. Under this scenario, the market's going to prevail in terms of which businesses will thrive and succeed and which won't.

Leigh: When do you think we'll expect to hear and update on the status of the Bill?

Betsy: Well, we're encouraged that the folks in the Senate have grown their list of co-sponsors to I think 22 currently. There seems to be a strong level of interest in addressing e-fairness in Congress. It came very close last year, and we're hopeful that there'll be action in the early summer.

Leigh: What can businesses or individuals do if they want to learn more about or get involved in the efforts to promote e-fairness?

Betsy: Well, ICSC has a great deal of information on the website, called Efairness.org, and I would thank those, including many Kimco centers, who put window slicks, signs, and

placards on their place of business and work. This is great visibility for our efforts, and we need people to keep that up.

We need people to write letters to members of Congress as well as letters to the editors in their local paper and opinion pieces that will help lend support to the effort. After all, shopping centers and the retail tenants help make up the fabric of the community. They're the ones that are providing the jobs, the services; they're hosting the Girl Scouts, the Red Cross, whatever it might be. We need to keep them strong and vibrant, and this is just one way to help.

Leigh: **Thank you for sharing all this information on the Marketplace Fairness Act with our listeners. Is there anything else you'd like those with us here today to know?**

Betsy: I would just say some people who are opposed to the effort don't necessarily understand it, and they view this as a new tax. It is not a new tax. It's a due tax. Again, 45 states have sales and use tax on their tax statute. We are just trying to modernize the current sales tax collection laws, and end the competitive advantage that out-of-state e-tailers have over local businesses in our community.

Leigh: **Thank you so much for joining us today, Betsy.**

Betsy: Thank you. It's a pleasure.

[READ MORE ABOUT THIS INTERVIEW AND GET THE AUDIO.](#)